

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2888 of 1994

WITH

SPECIAL CIVIL APPLICATION No 10485 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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MANILAL U.PARMAR

Versus

STATE OF GUJARAT & ORS

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Appearance:

1. Special Civil Application No. 2888 of 1994  
MR RC PATHAK for Petitioner  
MR PARESH UPADHYAY for Respondents
2. Special Civil Application No 10485 of 1996  
None present for Petitioner  
MR PARESH UPADHYAY for Respondents

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 11/09/97

ORAL JUDGMENT

Special Civil Application No.2888 of 1994:

#. The petitioner, in this Special Civil Application, has come up with the case that he was appointed as additional cashier cum junior clerk under the direct control of respondent No.3, Sub Treasury Officer, Kheralu, District Mehsana since 1982 on the basis of daily wage appointment of Rs.10/- per day which rate subsequently was increased to Rs.20/- per day. The grievance of the petitioner is that he is serving for respondent with utmost sincerity and hard work but he has not been regularized. Further grievance has been made that he is being paid on the basis of daily wages rate only whereas other regular employees working as additional cashier cum junior clerks are getting pay in the time scale of Rs.950-1500 though both are performing similar nature of duties. Prayer has been made by the petitioner in this Special Civil Application for declaration that he is entitled to get benefit of minimum pay in the time scale for junior clerks payable to regular employees, on the basis "equal pay for equal work", with permissible allowances. The petitioner has further prayed to direct the respondents to pay him the said rate of wages from the date of his initial appointment with 18% interest thereon.

#. This writ petition has come up for hearing before this Court on 2.3.94 on which date interim relief in terms of para 12(D) has been granted. In para 12(D) of the petition, the petitioner prayed that pending admission and final disposal of this petition, the respondents be restrained from terminating, discharging and/or discontinuing the services of the petitioner and further directing the respondents to pay the minimum of the time scale of pay of class III employees, i.e. the junior clerk to the petitioner with permissible allowances.

#. So what the learned counsel for petitioner stated was that the petitioner is getting minimum time scale with allowances for all these years.

Special Civil Application No.10485 of 1996:

#. In this Special Civil Application, the petitioner, as per his case, was appointed on 1.8.90 as a junior clerk cum cashier in the office of the Sub Treasury Officer at Vaghodia, District Vadodara on daily wages of Rs.20/- and the petitioner in this Special Civil Application has made identical grievance as made by the petitioner in Special Civil Application No.2888 of 1994. In this case, interim

relief has been granted in favour of petitioner in terms of interim relief which has been granted by this Court in Special Civil Application No.2888 of 1996 and Special Civil Application No.1235 of 1994. However, this Court, on 21st July 1997, after considering the matter at length, vacated the interim relief in this case.

#. Reply to both the Special Civil Applications have been filed by respondents. The defence of respondents in reply is that the route of such appointment of additional Shroff is in the Government of Bombay Circular dated 29.7.1954 wherein it was prescribed that to deal with heavy receipts of the day, excluding withdrawal from the currency chest, exceeds Rs.10,000/- an extra Shroff would be appointed by the Collectors. Such powers are delegated to District Treasury Officers vide Government Resolution dated 15.3.74. This position has continued till date and the concerned District Treasury Officers are exercising these powers as and when necessity arises. The case of respondent is that the petitioners were not appointed as junior clerk or cashier cum junior clerk. The petitioners were engaged only for the days when the receipts of the concerned Sub Treasury Office exceed the prescribed limits. At present, the learned counsel for the respondent stated that, the prescribed limit is Rs.2 lacs. The days on which the petitioners are being engaged, they are required to work for banking hours only. Normally the banking hours at the non banking Sub Treasury Office is 10.30 to 14.30. So the respondents stated that the petitioners were required to work only for four hours. The case of the petitioners that they have been threatened to terminate their services has been denied. Similarly, the allegation of the petitioners that they were compelled to work beyond prescribed hours has also been denied.

#. Shri R.C.Pathak, learned counsel for the petitioner in Special Civil Application No.2888 of 1994 submitted that the very fact that in one case the petitioner is continuously working since 1992 and in other case since 1990 goes to show that regular work is available at the respondent's Sub Treasury Offices. It has next been contended that the petitioners are doing the same work and discharging the same duties which are performed by regular clerks at the Sub Treasury Offices and as such on the principles of "equal pay for equal work" they are entitled for a minimum of pay together with allowances thereon.

#. On the other hand, the learned counsel for the respondents contended that even it is not a case of part

time employment, what to say of regular employment. The petitioners were not working for full working hours in the said Offices. Their services were taken only on the days on which work was available and as such it is incorrect to say on the part of the petitioners that they are continuously working from the years aforesaid. It has next been contended that daily wagers cannot claim parity with regular employees. In support of this contention, Shri Paresh Upadhyay, learned counsel for the respondents placed reliance on the decision of the Hon'ble Supreme Court in the case of State of Haryana v. Surendrakumar & Ors., reported in AIR 1997 SC 2129.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

#. The learned counsel for the petitioners is unable to successfully controvert that the petitioners have been given the work only on the days on which the cash receipts in the Sub Treasury Offices exceeded the prescribed limit, i.e. Rs.10,000/- earlier and now since May 1997, Rs.2 lacs. There is no material on record of these Special Civil Application to show that the petitioners are continuously and without any interruption whatsoever have been working for years as stated in the respective Special Civil Applications. Further the petitioners have not produced on record of these Special Civil Applications any evidence whatsoever to show that they are working for full working hours on the days on which their services are being taken. The Hon'ble Supreme Court, in the case of State of Haryana v. Surendrakumar & Ors. (supra), has held that the daily wagers cannot claim same pay scale as regular employees since their recruitment were not made in accordance with rules. Shri Upadhyay, learned counsel for the respondents submitted, which could not be successfully controverted by the learned counsel for the petitioners, that the recruitment to the post of junior clerks in the Treasury and Sub Treasury Offices are to be made in accordance with statutory rules framed in that behalf. Though in one of the cases, appointment order has been produced, but it is not case of the petitioner also that he has been given regular appointment as per recruitment rules.

##. There is no sanctioned post of junior clerks where the petitioners are working. To give help or assistance to the clerks who are working there, the petitioners are being engaged on the days on which work load increases. In view of these facts, both the prayers made by learned counsel for the petitioners in these Special Civil

Applications cannot be accepted.

##. However, the act of respondents to continuously go on engaging the petitioners on daily wages on the days on which their services are required is highly arbitrary and unjustified. This act or conduct of respondents is not befitting to a welfare State. It is true that there may not be sufficient work for regular clerks at the Sub Treasury Offices and to cope up with the work which suddenly increases on a particular day, it is understandable that daily wagers are engaged. This Court cannot compel the respondents to create the posts at the Sub Treasury Offices where sufficient work is not available, but at the same time, if the respondent are going to engage the services of these persons on daily wages only on the days of heavy work load, and this practice goes on continuously for years together, then it works harsh on those persons. There must be security of services which is very essential and necessary for the purpose of efficiency as well as loyalty to the employer. Continuing a person for all the years, in one case for more than fifteen years and in another case for seven years in this manner certainly causes prejudice to these persons. It is also not in the larger interest of the Government. If a person gets a meagre amount which is not even sufficient to meet out his own personal expenses what to say of the family, then it certainly causes manifold repercussions, particularly in cases where such persons have to deal with money. Where there is a necessity of appointing persons only on daily wages or on part time basis then these persons should be ensured security of services by providing avenue of regular appointment to them in the cadre concerned. The respondents could even make appointment on daily wages or part time basis etc. in consonance with the provisions of Articles 14 & 16 of the Constitution and after working as such for a reasonable period, that should be given due weightage of consideration for giving them regular appointment. That is not done. This Court has experienced that where even after serving for thirty years a person retires as a daily wager and he is not even given benefit of pension, gratuity and other retirementary benefits. The youth of a person is squeezed by the Government by giving him a token or nominal amount on daily wage or part time basis. It is true that such appointments are being made without following the provisions of Articles 14 & 16 of the Constitution, but that may not be a ground for not considering them at the appropriate time after completion of reasonable period of services for regular employment. As seen earlier, there is necessity of persons to help

the permanent staff at the Sub Treasury Offices and the petitioner in one case is providing that helping hand for all these fifteen years and in another case, for the last seven years. Their appointments may not be in accordance with recruitment rules or they would have been given appointment without following any procedure but the learned counsel for the respondents admits that this type of arrangement is continuing at about eleven places in the State. In these offices, when services of part timers or daily wagers are required as helping hand, then such persons should be selected by open marked selection and so long as their work is satisfactory, work should be given to them. After a reasonable period of working, say four to five years, one should be considered for regular appointment alongwith persons whose names have been called from employment exchange or applications are invited from the open marked and in regular selection, due weightage should be given to such persons. It is also advisable for respondents to prescribe a reasonable quota for this class of persons in regular employment. However, only those daily wagers or part timers would be entitled for regular employment whose appointments have been made in that capacity after open market selection and not the persons who have been given back door entry, but qualified for preferential consideration in regular employment. This exercise has to be undertaken by respondents now and as and when regular appointments are to be made for this class of employees in the Department, these persons should be considered and preference should be given to them while undertaking the aforesaid exercise. This procedure may take long time because it depends on availability of the post. However, the amount of Rs.20/- per day is hardly a sufficient amount. Though it is true, in view of the Hon'ble Supreme Court's decision aforesaid, they may not get parity in the pay scale, but at the same time to give them only a nominal amount totally isolated of what the actual pay scale is there is also not justified. Though these persons may work as daily wagers in future but the calculation of the amount should have been on the basis of minimum of the pay scale of the post plus Dearness Allowance at the prevailing rate and after totalling both, the daily wages may be calculated. If that is done, then they may have some sizeable amount as when their services are taken, to meet out expenses of their life. I am not deciding the question that the petitioners are working for full time, or what the learned counsel for the respondents contended, for four hours. This amount should be paid by considering each case on hourly basis also, i.e. to say, if they work for four hours or less, they may be paid accordingly and if they work for more than four hours,

payment shall be made accordingly.

##. The learned counsel for the petitioner in Special Civil Application No.2888 of 1994 submits that the interim relief granted by this Court may be continued till the petitioner's case is considered for regular appointment, but as in identical matter, this Court, after considering this question at length, has vacated interim relief, this prayer of the petitioner's counsel cannot be accepted.

##. In the result, these Special Civil Applications and the Rule in respective petitions stand disposed of in aforesaid terms. Interim relief granted by this Court in Special Civil Application No.2888 of 1994 vacated. No order as to costs.

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(sunil)